

3T

✓ 5T

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION : UNION COUNTY  
CRIMINAL - 97-02-00123

STATE OF NEW JERSEY,

vs.

MARVIN MATHIS,

Defendant,

: Stenographic Transcript  
: of  
: Trial Proceedings  
:  
:  
:  
:  
:

Place: Union County Courthouse  
2 Broad Street,  
Elizabeth, New Jersey,

Date: JUNE 11, 1998 - AFTERNOON SESSION

B E F O R E:

HON. JOHN F. MALONE, J.S.C., & JURY

TRANSCRIPT ORDERED BY:

OFFICE OF THE PUBLIC DEFENDER  
Appellate Section

A P P E A R A N C E S:

WILLIAM KOLANO, ESQ.  
Assistant Prosecutor, Union County,  
For the State,

WALTER E. FLORCZAK, ESQ.  
(Florczak & Florczak)  
Attorney for the Defendant,

B. PETER SLUSAREK, C.S.R., XI00291  
Official Court Reporter  
Union County Courthouse  
Elizabeth, New Jersey, 07207

XX

137

## WITNESSES INDEX

## (MORNING SESSION)

	PAGE
THOMAS KOCZUR	
Direct By Mr. Kolano	03
Cross By Mr. Florczak	87
Redirect By Mr. Kolano	103
Recross By Mr. Florczak	119

## (AFTERNOON SESSION)

MIGDALIA HERNANDEZ	
Direct By Mr. Kolano	139
Cross By Mr. Florczak	145
JOHN FURDA	
Direct By Kolano	158
Cross By Mr. Florcak	163
MIGDALIA HERNANDEZ	
Direct By Mr. Kolano	166
Cross By Mr. Florczak	171
APRIL DIGGS	
Direct By Mr. Kolano	175
Cross By Mr. Florczak	197

- COLLOQUY -

138

1 AFTERNOON SESSION - JUNE 11, 1998.

2 THE COURT: Before we bring the jury out, Mr. Kolano,  
3 what is the proposed sequencing of witnesses for this  
4 afternoon?

5 MR. KOLANO: Proposed sequencing of witnesses is a  
6 hearing outside of the presence of the jury for Migdalia  
7 Hernandez. This relates to adoptive admission.

8 Mr. Florczak wants on the record what we are seeking  
9 to introduce and do some further inquiry. I have no objection  
10 to that. I think it's somewhat mandated by the rule, if  
11 counsel is requesting a hearing.

12 Then I was going to put Detective Furda, on who I will  
13 anticipate will be a ten minute witness, since there is kind of  
14 a stipulation that he will be permitted to testify as to some  
15 hearsay stuff, since we both agree on it.

16 And then I will put Migdalia Hernandez on in front of  
17 the jury.

18 THE COURT: Okay.

19 MR. KOLANO: One last matter. I have been requested  
20 by sheriff's officer to put on the record when we get to April  
21 Diggs afterwards I may have her step down and show the streets  
22 that she went through. Therefore that she not be cuffed while  
23 she is in the seat.

24 THE COURT: All right. Before we bring the jury out,  
25 let's have the witness on the 104 hearing regarding the

- COLLOQUY -

139

1 adoptive admission.

2 MR. KOLANO: Migdalia Hernandez.

3 MR. KOLANO: Since I think reference to the statement  
4 will be made, I am going to ask that it be marked next  
5 sequential number, which is 47.

6 M I G D A L I A H E R N A N D E Z

7 Sworn as a witness and testified as follows:

8 DIRECT EXAMINATION BY MR. KOLANO:

9 Q. Do you live at 224 Third Street, apartment six, in  
10 Elizabeth?

11 A. Yes.

12 Q. Did you live there on January 22nd of 1996?

13 A. Yes.

14 Q. Did you live -- Or did you let out a room to a Stephen  
15 Owens?

16 A. Yes.

17 Q. Did you live there with anybody else?

18 A. My two kids.

19 Q. How old were your kids back then, approximately?  
20 How old are your kids now?

21 A. My son is nine, my daughter six years old.

22 Q. Do you recognize Marvin Mathis in the courtroom?

23 A. Yes.

24 Q. Would you please just indicate where he is sitting and  
25 what he is wearing?

HERNANDEZ - DIRECT BY KOLANO

140

1 A. Sitting over on my left side (indicating).

2 THE COURT: Indicating the defendant.

3 Q. Did you know him back in January of 1996?

4 A. Yes.

5 Q. Did he ever come to your house?

6 A. Yes.

7 Q. Did you know Antwan Harvey?

8 A. Yes.

9 Q. Did he ever come to your house back in January of  
10 1996?

11 A. Yes.

12 Q. Did you know April Diggs?

13 A. Yes.

14 Q. Did she ever come to your house back in January of  
15 1996?

16 A. Yes.

17 Q. Did you know Renee Diggs?

18 A. Yes.

19 Q. Did she ever come to your house in December of 1996?

20 A. Yes.

21 Q. I am sorry. January of 1996?

22 A. Yes.

23 Q. Do you recall giving a statement to the police as it  
24 related to homicide investigation that they were conducting?

25 A. Yes.

HERNANDEZ - DIRECT BY KOLANO

141

1 Q. And on the evening of January 22nd, 1996, did you see  
2 Renee, April, Marvin, and Antwan at your house?

3 A. Yes.

4 Q. Did there come a point in time where they left your  
5 house?

6 A. Yes.

7 Q. And did there come a point in time where they returned  
8 back to your house?

9 A. Yes.

10 Q. I am going to show you what has been marked S-47 for  
11 identification, for the purposes of this hearing. If you would  
12 turn to page four. Am I reading accurately, on the bottom:

13 "Question: Did Stephen Owens lend his gun to Antwan  
14 Harvey or Marvin Mathis January 22nd 1996?

15 "Answer: I know that they had a gun, but I don't  
16 know who owned it.

17 "Question: How do you know that they had a gun?

18 "Answer: They were talking about a gun in my kids'  
19 room."

20 Q. When you say they, who was in the room?

21 A. It was Antwan Harvey, Marvin Mathis, and Stephen Owens,  
22 Renee and April.

23 Q. Did Stephen Owens ever leave with the four of them on  
24 that evening?

25 A. No.

HERNANDEZ - DIRECT BY KOLANO

142

1 Q. Do you know which person said that they had a gun?

2 A. No.

3 Q. Do you know if it was a male or female voice?

4 A. No.

5 Q. Could you, did you witness them saying it or did you  
6 hear it through the door?

7 A. As they was walking one of them say they had a gun, but I  
8 don't know which one said it.

9 Q. As they were walking out?

10 A. Yes.

11 Q. As they were walking out of where?

12 A. My apartment.

13 Q. To go out to the outside?

14 A. Yes.

15 Q. Hallway. And Stephen Owens never walked out?

16 A. No.

17 Q. Had to be one of the four of them?

18 MR. FLORCZAK: I object.

19 THE COURT: I sustain the objection.

20 Q. Which four were walking out when you heard them say  
21 they had a gun?

22 A. Marvin, Antwan Harvey, Renee and April.

23 Q. Now, did there come a point in time where they  
24 returned back about an hour later?

25 A. Yes.

HERNANDEZ - DIRECT BY KOLANO

143

1 Q. Did you see if they had a gun when they returned back?

2 A. No.

3 Q. Did they say anything about the gun when they came  
4 back?

5 A. No.

6 Q. Now, do you remember being questioned, on page six:  
7 "When the four of them returned to the apartment can you  
8 describe how they were acting?.

9 "Answer: They were excited. One of the men said,  
10 quote, We shot somebody, close quote, when they first came in  
11 the door. One of the girls said they didn't get anything out  
12 of him.

13 "Question: When you say they said We didn't get  
14 anything out of him, who were they talking about?

15 "Answer: The guy they shot."

16 Did you give those words to the police?

17 A. Yes.

18 Q. Are those accurate words as you sit here today?

19 A. Yes.

20 Q. Do you remember which one of the men said We shot  
21 somebody when they came back?

22 A. No.

23 Q. When they came back and they made this comment, this  
24 was about, was this about an hour after they had left and said  
25 We have a gun?



HERNANDEZ - DIRECT BY KOLANO

144

1 MR. FLORCZAK: I would object. It's leading.

2 MR. KOLANO: This is pretrial hearing. We are just  
3 trying to establish what is going to be said.

4 THE COURT: There has already been testimony that they  
5 returned an hour later. So on this particular --

6 MR. FLORCZAK: I missed that.

7 THE COURT: There was, the questions were asked about  
8 that.

9 MR. FLORCZAK: I am sorry.

10 THE COURT: Did they leave, and they later returned;  
11 and there were couple of questions later indicated that it was  
12 an hour later.

13 MR. FLORCZAK: You are correct, judge.

14 Q. This is when they came back after they had left the  
15 first time?

16 A. Um-hum. Yes.

17 Q. Just so we are clear, so the judge has an idea of what  
18 we are talking about: They walked out, and one of them said We  
19 have a gun, one of the four of them, you don't know which one? ✓

20 A. Yes, I don't know which one said it.

21 Q. An hour later they came back?

22 A. Yes.

23 Q. When they came back they went into a room?

24 A. Yes.

25 Q. And you heard one of the men say We shot somebody? ✓

HERNANDEZ - DIRECT BY KOLANO

145

1 A. Yes.

2 Q. And you heard one of the girls say that they didn't  
3 get anything?

4 A. Yes.

5 Q. And you don't know which girl or which man?

6 A. No.

7 Q. And the only people in the room were Renee and April  
8 were the only girls?

9 A. Yes.

10 Q. And the only men were Antwan, Marvin, and Stephen  
11 Owens?

12 A. Yes.

13 Q. But Stephen Owens never left the apartment that night  
14 with the others?

15 A. No. No.

16 MR. KOLANO: Your Honor, state will be eliciting more  
17 at trial, but not as it impacts on the co-conspirator or  
18 adoptive admission.

19 No further questions.

20 THE COURT: Mr. Florczak.

21 CROSS EXAMINATION BY MR. FLORCZAK:

22 Q. What time were they leaving?

23 A. I don't know.

24 Q. Where were they when you heard this?

25 A. When they were leaving?

HERNANDEZ - CROSS BY FLORCZAK

146

1 Q. When you heard someone say I have a gun, or whatever,  
2 where were they?

3 A. They was leaving walking out the door, and I was in the  
4 living room with my two kids.

5 Q. How far away were you?

6 A. Not close.

7 Q. How close is the living room to the door they were  
8 leaving?

9 A. Not too far.

10 Q. Are there any rooms in between?

11 A. No.

12 Q. Is the door in the living room?

13 A. Yes.

14 Q. So you are across one side of the living room?

15 A. Yes.

16 Q. Was Mr. Owens at the door when they were leaving?

17 A. No.

18 Q. Where was he?

19 A. In the room.

20 Q. So that you didn't hear them talking about a gun in  
21 the kids' room?

22 A. They was talking about a gun in my kids' room. When they  
23 walking out the door they said they had a gun. I don't know  
24 which one said it.

25 Q. Did you hear them talking in the kids' room?

HERNANDEZ - CROSS BY FLORCZAK

147

1 A. Yes.

2 Q. Okay. Now, you could see all of them when you heard  
3 this. Right?

4 A. Excuse me?

5 Q. Was anyone out the door when you heard this?

6 A. No. ✓

7 Q. You couldn't tell whether it was a male voice or  
8 female voice?

9 A. No.

10 Q. Do you remember exactly what they said?

11 A. No.

12 Q. Well, you heard the word gun, I assume?

13 A. Yes.

14 Q. Well, did you hear I have a gun, or I am going to get  
15 a gun, or anything else like that? Could you tell which?

16 A. I heard they said they had a gun. I don't know which one  
17 said it.

18 Q. That's what I am asking you. What did you hear said  
19 exactly?

20 A. I heard one of them say they had a gun. I don't know who  
21 said it.

22 Q. Now, they returned an hour later?

23 A. Yes.

24 Q. Do you know what time that was?

25 A. No. ✓

HERNANDEZ - CROSS BY FLORCZAK

148

1 Q. All four of them returned at the same time?

2 A. Yes.

3 Q. Who opened the door for them?

4 A. I don't remember.

5 Q. Do you know where you were when they came in?

6 A. No.

7 Q. Do you know where you were when you heard someone say  
8 We shot somebody?

9 A. In the living room.

10 Q. Where were they when you heard it?

11 A. When they was walking in.

12 Q. And you didn't, you don't know who said it?

13 A. No.

14 MR. FLORCZAK: That's all I have.

15 MR. KOLANO: No redirect, your Honor.

16 THE COURT: All right.

17 THE COURT: Miss Hernandez, you you may step down.  
18 Watch your step as you step off. You are not excused, however.  
19 I would ask that you continue to wait outside in the hallway.

20 (Witness left the courtroom).

21 MR. FLORCZAK: Judge, I assume -- I will deal with the  
22 second statement afterward. I assume that the prosecutor is  
23 seeking to have that admitted as a statement during the  
24 co-conspirators statement.

25 MR. KOLANO: First statement as they are walking out

- COLLOQUY -

149

1 the door and they say We have a gun?

2 MR. FLORCZAK: No. Second statement.

3 MR. KOLANO: Second statement as co-conspirator and  
4 adoptive admission.

5 MR. FLORCZAK: Well, judge, I would argue, first, even  
6 statements made during the, during the conspiracy may not be  
7 admissible, however, if not made in furtherance of the ends of  
8 the conspiracy. I don't understand how someone saying we  
9 didn't get anything, and we shot someone, is in furtherance of  
10 a conspiracy.

11 First I argue conspiracy was over, act was over. I  
12 agree that had they been talking about concealing the gun,  
13 getting rid of the weapon, that would be in furtherance of a  
14 conspiracy, and that could be admissible. But these statements  
15 are not made in furtherance of the ends of the conspiracy.

16 And there are several cases cited hear I can give to  
17 the court.

18 For those reasons, I suggest to the court that the  
19 statements made when they returned are not admissible.

20 I don't know if you want to do these individually.

21 THE COURT: Let's stick with that. We are talking  
22 about the two statements that the witness indicated that she  
23 heard upon the return of the four persons, the one about having  
24 shot somebody and the second statement about not having  
25 obtained anything.

- COLLOQUY -

150

1 MR. FLORCZAK: And as to adoptive admission, judge,  
2 silence, judge, is not an adoptive admission if the statement  
3 is not a direct accusation at the person. And I am suggesting  
4 We shot someone is not a direct accusation of my client. And  
5 therefore it's not an adoptive admission.

6 I am citing from Burbridge versus Pascall, which talks  
7 where a statement does not directly accuse the listener of  
8 wrongdoing he is regarded as having no duty to respond. So his  
9 failure to deny the substance of the statement cannot be  
10 regarded as an admission.

11 THE COURT: Mr. Kolano.

12 MR. KOLANO: Your Honor, on this last point, we are  
13 offering it, one, as adoptive admission; two, as a statement in  
14 furtherance of a conspiracy.

15 Clearly, there need not be charged in the indictment a  
16 conspiracy, if the court finds the existence of a conspiracy  
17 based on the statements already in evidence. Clearly, this  
18 court can find existence of a conspiracy based on the  
19 admissions made by the defendant in his statement and already  
20 testified to.

21 State versus Harris, death penalty case, says a  
22 conspiracy to commit murder was said to have continued even  
23 after the murder was committed to include a conversation  
24 between two of the conspirators concerning how the hit man was  
25 to be paid.

- COLLOQUY -

151

1           Here we have a robbery. The idea of doing a robbery  
2 is to get money. The idea of having four people involved in  
3 the robbery, common sense that the monies are going to be  
4 shared, that there is going to be some benefit in participating  
5 in this robbery. Here when they are talking about We didn't  
6 get anything -- because we know they came back two different  
7 routes -- that now it's time to divvy up the money. So the  
8 statement We didn't get anything is a statement in furtherance  
9 of the the conspiracy, of the robbery, Hey, in effect there are  
10 no proceeds to divide up because we didn't get anything.

11           The fact that they shot someone is also a statement in  
12 furtherance of the conspiracy because that relates to where the  
13 gun now has to go in terms of any concealment. Because this  
14 gun now is not just a display, this gun was involved in a  
15 shooting and killing. So now this gun becomes a, a hot item,  
16 so to speak.

17           THE COURT: But they are not talking about getting rid  
18 of the gun; they are simply talking about the gun was used.

19           MR. KOLANO: Yes.

20           THE COURT: No one says We shot somebody. What are we  
21 going to do with the gun? Or, We shot somebody. Who is going  
22 to get rid of this gun. It is just a statement of fact, We  
23 shot somebody.

24           MR. KOLANO: Agreed.

25           THE COURT: Reporting the results of the conspiracy:



- COLLOQUY -

152

1 We shot somebody. We didn't get any money.

2 MR. KOLANO: I agree, your Honor.

3 But I would suggest that is a foundation statement  
4 that would go part and parcel as to the steps to conceal the  
5 gun. Obviously, there are no more further statements as to the  
6 concealment that are being offered. Because there were no  
7 factual, nothing factual brought out.

8 As to the adoptive admission, We shot somebody, if  
9 two, three, or four people are together and say We shot  
10 somebody, that is a direct accusation.

11 I know if Detective Diaz says, The two of us, we shot  
12 somebody, and I didn't do it, I would say No, I didn't. I  
13 think the law says reasonable person would say, No, I didn't.

14 So it is, to use Mr. Florczak's reading of the law, a  
15 direct accusation, We shot somebody. And yet the defendant,  
16 Marvin Mathis, who was there, was one of the four people who  
17 came back, did not deny it. And this comes on the heels of  
18 them walking outside saying We have a gun, coming back and  
19 saying We shot somebody.

20 So I would argue it is admissible for those two  
21 reasons.

22 THE COURT: Mr. Florczak, you want to be heard?

23 MR. FLORCZAK: No, judge. I suggest that when they  
24 say it's a direct accusation it has to be specifically directed  
25 at the person they want to use the statement against. And

- COLLOQUY -

153

1 there is nothing to indicate this was specifically directed at  
2 my client.

3 THE COURT: As long as you are up, there is other  
4 testimony about prior to leaving, reference to the gun.

5 MR. FLORCZAK: There I have a problem, judge, as to it  
6 very well may be considered in furtherance of the conspiracy.  
7 My only concern, judge, is that she can't even testify whether  
8 it was a male voice, female voice that said it. It's very  
9 vague testimony.

10 That would be the basis of my objection.

11 THE COURT: Mr. Kolano.

12 MR. KOLANO: Basic logic. There are only four walking  
13 out. One of them says We have a gun. Therefore, it is a  
14 statement in furtherance of the conspiracy, four identified,  
15 four were ultimately charged.

16 And I would indicate, and this goes beyond factually  
17 what we did, she is also going to testify two men were walking  
18 out with ski masks, but that she saw with her own eyes. So in  
19 that context clearly this is a statement, furtherance of  
20 conspiracy statement of intention, plan, possession of this  
21 gun. And it's highly significant as to what they were about to  
22 do and what they in fact later did.

23 THE COURT: Getting to the second part first, I do  
24 think that that statement made by one of the four -- and under  
25 the testimony that was presented it could have only been one of

- COLLOQUY -

154

1 the four who made the statement. Although the witness could  
2 not identify even male or female. But, nevertheless, it was a  
3 statement made by one of the conspirators about being in  
4 possession of a gun.

5 To me that is within the context of furtherance of the  
6 conspiracy, and that statement is admitted.

7 I have difficulty with the other two statements. I  
8 don't see how a statement made after the event is over simply  
9 pointing out, as I said, the results of the, of the conspiracy,  
10 We shot somebody, We didn't get any money, are related to an  
11 ongoing furtherance of the conspiracy. As I said, there is  
12 nothing that says We have money to divide up, We have a gun to  
13 get rid of. To me that would, those are the kinds of  
14 statements that would be in furtherance of a conspiracy. But  
15 simply pointing out We shot somebody and We didn't get any  
16 money is, almost on its face indicates the event is over, we  
17 are now talking about what happened. We are rehashing it.

18 It is not a furtherance of the conspiracy.

19 And as to an adoptive admission, I agree with the  
20 defense contention with respect to this.

21 Again, simply reporting what took place is not an  
22 accusation directed at the defendant that would logically  
23 expect the defendant to respond to, if it was appropriate for  
24 him to do so, with a denial.

25 I don't see that it is an adoptive admission. And,

- COLLOQUY -

155

1 therefore, that part of the conversation, those portions of the  
2 conversations of what may have been said after they returned is  
3 excluded as hearsay.

4 MR. FLORCZAK: Judge, just one other matter before the  
5 jury comes out.

6 I just want to make sure that at the time the  
7 statement was given by the witness, Miss Hernandez, that there  
8 were no criminal charges or Division of Youth and Family  
9 Services charges pending against her as a result of what may  
10 have happened in January of 1996. Specifically the tape.  
11 Whether there was any child endangerment charge or other charge  
12 filed against her that may have been pending when this  
13 statement was given.

14 MR. KOLANO: There were no criminal charges. Frankly,  
15 I never looked into whether or not there was any DYFS  
16 investigation. They are separate agency. I am not aware of  
17 any.

18 And we can bring her in quickly and ask her.

19 MR. FLORCZAK: I would appreciate if she was asked.

20 MR. KOLANO: I would object to that. Unless he has  
21 something, I would object to that question being asked in front  
22 of the jury.

23 MR. FLORCZAK: That's why I am asking now.

24 THE COURT: Why don't we bring Miss Hernandez back in  
25 right now.

- COLLOQUY -

156

1 OFFICER: You are still under oath.

2 THE COURT: Miss Hernandez, you are still under oath.

3 And Mr. Kolano has some additional question or  
4 questions for you for purposes of this hearing.

5 BY MR. KOLANO:

6 Q. Miss Hernandez, you are not, you weren't charged or  
7 convicted of any crimes, were you?

8 A. No.

9 Q. And you weren't facing any charges at the time you  
10 gave this statement, were you?

11 A. No.

12 Q. Did you ever have any involvement by DYFS?

13 A. Yes.

14 Q. You did? Was that pending at the time you gave this  
15 statement?

16 A. No.

17 Q. When did that come up?

18 A. Long time ago.

19 Q. Was that completely done and over with before the  
20 police saw you in 1996?

21 A. Yes.

22 Q. As a result thereafter did DYFS do anything to you?

23 A. No.

24 MR. KOLANO: I have nothing further.

25 THE COURT: Mr. Florczak

- COLLOQUY -

157

1 BY MR. FLORCZAK:

2 Q. You are aware that there was a video tape that was  
3 taken by the police?

4 A. Yes.

5 Q. As a result of that video tape, DYFS did not come,  
6 become involved with you and your child?

7 A. No.

8 MR. FLORCZAK: Thank you.

9 THE COURT: Miss Hernandez, once again I am going to  
10 excuse you for now. You can step down. Be careful, watch your  
11 step. But you are not excused. You have to wait in the  
12 corridor. We will get you back in at a later point.

13 THE WITNESS: Can I call somebody pick up my daughter  
14 from school?

15 THE COURT: You certainly can. There are some phones  
16 outside on this floor.

17 Anything else before we bring the jury?

18 MR. KOLANO: No. Since Miss Hernandez has to make  
19 that phone call I will use the detective first. It will be a  
20 brief witness.

21 THE COURT: Please bring out the jury.

22 (Jury seated in the jury box in the courtroom.)

23 THE COURT: Good afternoon, ladies and gentlemen.

24 Mr. Kolano, your next witness.

25 MR. KOLANO: John Furda.

FURDA - DIRECT BY KOLANO

158

1 J O H N F U R D A

2 Sworn as a witness and testified as follows:

3 DIRECT EXAMINATION BY MR. KOLANO:

4 Q. By whom are you employed?

5 A. Union County Prosecutor's Office.

6 Q. In what capacity?

7 A. Detective.

8 Q. How long have you been a detective with the  
9 prosecutor's office?

10 A. October '89.

11 Q. And prior to joining the prosecutor's office do you  
12 have prior law enforcement experience?

13 A. I was with Plaintiff's Police Division since March of '86.

14 Q. And, sir, did you become case detective involved in  
15 the investigation of the homicide shooting death of Antonio  
16 Saraiva on January 22nd, 1996?

17 A. That's correct.

18 Q. And did you participate in the execution of a consent  
19 to search on Magnoila Avenue on January 24th, 1996?

20 A. That's correct.

21 Q. Who did you go there with?

22 A. Mrs. Mathis, the defendant's mother.

23 Q. And did the defendant and his mother execute a consent  
24 to search and go there?

25 Did Miss Mathis go there voluntarily with you?

FURDA - DIRECT BY KOLANO

159

1 A. Yes, sir.

2 Q. And you said Mr. Mathis. Do you see him in the  
3 courtroom today?

4 A. Yes, sir.

5 Q. Would you please identify him by indicating where he  
6 is sitting and what he is wearing?

7 A. Seated to the left, wearing dress shirt, tie, and tan  
8 slacks.

9 THE COURT: Indicating the defendant.

10 Q. When you went to the defendant's house at 658 Magnolia  
11 Avenue in Elizabeth, did you obtain an item of clothing?

12 A. I am sorry. 538 Mag --?

13 Q. Yes. 538 Magnolia Avenue.

14 A. Yes, sir.

15 Q. What type of clothing did you obtain?

16 A. They were black BDU, basic duty uniform military type  
17 pants.

18 Q. Showing you what has been marked S-31 for  
19 identification, I ask you to look at it and indicate whether or  
20 not you recognize this item?

21 A. Yes, sir.

22 Q. And after you received this item did you turn it over  
23 to another detective in the case?

24 A. Yes, sir. Detective Koczur of the Elizabeth Police  
25 Department.



FURDA - DIRECT BY KOLANO

160

1 Q. Sir, did there come a point in time on January 25th,  
2 1996, that you went to the City of Carteret?

3 A. Yes, sir.

4 Q. Specifically, did there come a point in time when you  
5 went to G5 Bergen Street in Carteret?

6 A. Yes, sir.

7 Q. Did you come to meet or identify a person as Antwan  
8 Harvey at that time?

9 A. Yes, sir.

10 Q. And did you have an arrest warrant prior to going to  
11 that location?

12 A. Yes, sir, I did.

13 Q. Was Mr. Harvey placed under arrest by you and members  
14 of the Carteret Police Department?

15 A. He was.

16 Q. And that was on charges stemming out of this shooting?

17 A. That's correct.

18 Q. In Union County?

19 A. Yes, sir.

20 Q. And was there obtained a firearm in the location where  
21 Mr. Harvey was located?

22 A. Yes, sir.

23 Q. And who actually obtained that firearm?

24 A. It was then Detective McFadden I believe, Detect Sergeant  
25 McFadden of the Carteret Police Department.

FURDA - DIRECT BY KOLANO

161

1 Q. Did he immediately turn that over to you?

2 A. Yes, sir.

3 Q. And did he indicate to you where that gun was located?

4 A. Yes, sir.

5 Q. And where was that?

6 A. It was a crawl space at the top of the stairs leading to  
7 the second floor.

8 Q. And the gun was turned over to you, and -- strike  
9 that.

10 MR. KOLANO: Your Honor, for the record, this weapon  
11 has been checked.

12 THE COURT: Thank you.

13 Q. Showing you what's marked S-22 on the box. I ask you  
14 to look at this weapon and indicate whether or not you  
15 recognize it?

16 A. Yes, sir.

17 Q. And how is it that you are able to recognize that  
18 weapon?

19 A. It's the Regent brand .32 caliber revolver I seized that  
20 day.

21 Q. And that weapon did it have any bullets or ammunition  
22 in it at the time of its seizure?

23 A. No, sir.

24 Q. Now, approximately how many homicide cases have you  
25 been involved in?

FURDA - DIRECT BY KOLANO

162

1 A. Over a hundred.

2 Q. And, sir, is there a way to your knowledge to be able  
3 to determine if this weapon caused someone's death in the  
4 absence of finding a bullet or a casing?

5 A. No, sir.

6 Q. Ballistically speaking?

7 A. No, sir.

8 Q. Did you also obtain an item of clothing. You obtained  
9 numerous items of clothing at that scene?

10 A. Yes, sir.

11 Q. That was pursuant to consent and a search warrant?

12 A. That's correct, sir.

13 Q. Specifically referring to one item, what's marked S-26  
14 for identification, I ask you to look at it. Do you recognize  
15 that?

16 A. Yes, sir.

17 Q. And what is this?

18 A. This is a coat I seized when I arrested Antwan Harvey in  
19 Carteret.

20 Q. And was this to your knowledge Antwan Harvey's  
21 property?

22 A. Yes, sir.

23 Q. Did he have other clothing and property at that  
24 location in Carteret?

25 A. Yes.

FURDA - DIRECT BY KOLANO

163

1 Q. Did you seize numerous items of that clothing?

2 A. Yes.

3 Q. Proved to be of no evidential value?

4 A. That's correct sir.

5 Q. When Mr. Harvey was brought back, did you speak to  
6 him?

7 A. After we got back to Elizabeth headquarters, yes, I  
8 Mirandized him in Carteret and again in Elizabeth. Yes, sir.

9 MR. KOLANO: May I have item marked, please.

10 Q. Showing you what has been marked S-48 for  
11 identification, I ask you to look at it and indicate whether or  
12 not you recognize it.

13 A. Yes, sir. This is a copy of the statement I took from a  
14 Mr. Harvey on that date.

15 Q. I don't want you to go through any of the details.  
16 But how many pages is this statement?

17 A. Concludes on page ten.

18 Q. And does Mr. Harvey's signature appear there?

19 A. Yes, sir.

20 Q. As well as your signature?

21 A. Yes, sir.

22 MR. KOLANO: Nothing further.

23 THE COURT: Mr. Florczak.

24

25

FURDA - CROSS BY FLORCZAK

164

1 CROSS EXAMINATION BY MR. FLORCZAK:

2 Q. Can you tell us what date you arrested Mr. Harvey?

3 A. It was the Thursday after the murder that occurred on the  
4 22nd, I believe that would be the 24th, then, of January, '96.

5 Q. And at the place that you arrested Mr. Harvey you  
6 found his jacket and you found this gun, is that correct?

7 A. That's correct, sir.

8 Q. And so essentially same time. You didn't make a  
9 second trip to get the gun, did you?

10 A. No, sir.

11 Q. And can you describe the gun to us, please?

12 A. Certainly. It's a Regent brand .32 caliber revolver with  
13 wood grain type grips. I believe it's a five shot.

14 Q. Color of the gun?

15 A. Blue in color, sir.

16 Q. Would you describe that as a dark color?

17 A. Yes, sir. Almost appears black, but it's blueing.

18 Q. And from your investigation did that gun match the  
19 description of the gun that was used in the shooting?

20 MR. KOLANO: Description provided by whom?

21 THE COURT: If you would.

22 MR. FLORCZAK: During your investigation.

23 MR. KOLANO: By whom?

24 THE COURT: If you can narrow it down.

25 MR. FLORCZAK: By -- Let me rephrase the question.

FURDA - CROSS BY FLORCZAK

165

1 Q. Did you, for instance, read the statements of April  
2 Diggs and Renee Diggs?

3 A. Yes, sir.

4 Q. Did this gun essentially match their description of  
5 the weapon?

6 MR. KOLANO: Objection, your Honor, unless the whole  
7 statement is going into evidence.

8 MR. FLORCZAK: I withdraw the question, judge.

9 MR. KOLANO: Are you done?

10 MR. FLORCZAK: I am done. Thank you.

11 REDIRECT EXAMINATION BY MR. KOLANO:

12 Q. You indicated that you arrested Antwan Harvey on  
13 Thursday following the homicide?

14 A. That's correct.

15 Q. Homicide was on Monday, the 22nd?

16 A. That's correct.

17 Q. Tuesday the 23rd, Wednesday the 24th, Thursday 25th?

18 A. Sorry, sir.

19 Q. You took a statement the same day you arrested him?

20 A. Yes, sir.

21 Q. And the statement was taken on what?

22 A. 25th.

23 MR. KOLANO: Thank you. Nothing further.

24 THE COURT: Mr. Florczak, anything else of this  
25 witness?

HERNANDEZ - DIRECT BY KOLANO

166

1 MR. FLORCZAK: No, judge. Thank you.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 MR. KOLANO: Migdalia Hernandez.

5 M I G D A L I A H E R N A N D E Z

6 Sworn as a witness and testified as follows:

7 DIRECT EXAMINATION BY MR. KOLANO:

8 Q. Where do you live?

9 A. 224 Third Street.

10 Q. In what city?

11 A. Elizabeth.

12 Q. And on January 22nd 1996 did you live there?

13 A. Yes.

14 Q. And did you know a Stephen Owens at that time?

15 A. Yes.

16 Q. Where did he live at that time?

17 A. In January?

18 Q. Of 1996?

19 A. He was staying with me.

20 Q. And who else was living at that apartment?

21 A. My two kids.

22 Q. Which apartment was that?

23 A. Six.

24 Q. And back then did you know Marvin Mathis?

25 A. Yes.

HERNANDEZ - DIRECT BY KOLANO

167

1 Q. Do you see him in the courtroom?

2 A. Yes.

3 Q. Would you please identify him?

4 A. (Indicating).

5 THE COURT: Indicating the defendant.

6 Q. How long had you known him up to January 1996?

7 A. About a month, I don't know.

8 Q. Had he been in your apartment regularly?

9 A. Yes.

10 Q. Did you know Antwan Harvey?

11 A. Yes.

12 Q. And up until January 22nd, 1996, had he been in your  
13 apartment regularly?

14 A. Yes.

15 Q. Did you know April Diggs?

16 A. Yes.

17 Q. Prior to and up until January 22nd, 1996, had she been  
18 in your apartment regularly?

19 A. Yes.

20 Q. Did you know Renee Diggs?

21 A. Yes.

22 Q. And prior to and up until January 22nd, 1996, had she  
23 been in your apartment regularly?

24 A. Yes.

25 Q. On January 22nd, 1996, were Renee Diggs, April Diggs,



HERNANDEZ - DIRECT BY KOLANO

168

1 Antwan Harvey, and Marvin Mathis in your apartment?

2 A. Yes.

3 Q. Did there come a point in time where they left your  
4 apartment.

5 A. Yes.

6 Q. And did they all four of them walk out sort of  
7 together?

8 A. Yes.

9 Q. As they were walking out, did you hear one of them say  
10 something?

11 A. As they were walking out one of them say they had a gun. I  
12 don't know which one said it.

13 Q. But it was in the presence of all four of them?

14 A. Yes.

15 Q. Did they, were they gone long?

16 A. Yes.

17 Q. How long were they gone?

18 A. (Pause) I don't know the time. Can't remember that. I  
19 don't know, it was for long but I don't know.

20 Q. Could it have been about an hour?

21 A. Yes.

22 MR. FLORCZAK: I object to leading.

23 THE COURT: Sustained.

24 Q. We will do it the long way.

25 Showing you what has been marked S-47 for identification,

HERNANDEZ - DIRECT BY KOLANO

169

1 do you recognize?

2 A. Yes.

3 Q. Is this a copy of your statement?

4 A. Yes.

5 Q. Did you give the statement to the police?

6 A. Yes.

7 Q. When you gave the statement to the police was it true  
8 and accurate?

9 A. Yes.

10 Q. And you reviewed it. Did you review it prior to  
11 coming here today?

12 A. Yes.

13 Q. Does it continue to be true and accurate?

14 A. Yes.

15 Q. At any time during when the four people left your  
16 apartment did Stephen owns leave?

17 A. No.

18 Q. Did the four people come back together?

19 A. Yes.

20 Q. Prior to them leaving, did the men have anything in  
21 their hands that you recall?

22 A. They had a mask.

23 Q. When you say they had a mask. How many masks did you  
24 see?

25 A. Two.

HERNANDEZ - DIRECT BY KOLANO

170

1 Q. Who had the masks?

2 A. Marvin and Antwan.

3 Q. What kind of masks?

4 A. A black mask, face mask.

5 Q. I am showing you what has been marked S-28 for  
6 identification. Does that look familiar at all?

7 A. Yes.

8 Q. And does this -- How is it familiar to you?

9 A. I seen it when they had it in their hand.

10 Q. When they came back, did the men have anything in  
11 their hands?

12 A. The masks.

13 Q. Did all four, did Marvin Mathis and Antwan Harvey,  
14 April Diggs and Renee Diggs return back to your apartment on  
15 the evening of the 22nd of January 1996?

16 A. Yes.

17 Q. Do you have any reason to dislike Marvin Mathis?

18 A. No.

19 Q. What was the nature of your relationship with Marvin  
20 Mathis?

21 A. Friend.

22 Q. What was the nature of your relationship with Antwan  
23 Harvey?

24 A. Friend.

25 Q. Do you consider Antwan Harvey to be a friend to this

HERNANDEZ - DIRECT BY KOLANO

171

1 day?

2 A. He was a friend of mine.

3 Q. And Marvin Mathis did he ever do anything to hurt or  
4 harm you in any way?

5 A. No.

6 Q. Do you have any reason to lie about him or his  
7 actions?

8 MR. FLORCZAK: Judge, I object.

9 THE COURT: Overruled.

10 Q. Do you have any reason to lie about him?

11 A. No.

12 Q. Your relationship with April Diggs, were you friends?

13 A. Yes.

14 Q. Your relationship with Renee Diggs, were you friends?

15 A. Yes.

16 Q. Any reason to lie about Antwan, April, or Renee?

17 A. No.

18 MR. KOLANO: Thank you. Nothing further.

19 CROSS EXAMINATION BY MR. FLORCZAK:

20 Q. Miss Hernandez, do you know when you gave the  
21 statement? You gave a statement to the police?

22 A. Yes.

23 Q. When did you give it to them?

24 A. I don't remember what date was it.

25 Q. Do you remember what season it was?

HERNANDEZ - CROSS BY FLORCZAK

172

1 A. No.

2 Q. Do you remember what year it was?

3 A. No.

4 Q. If I told you you gave the statement six months after  
5 this all happened, would that be -- is that possible?

6 A. Excuse me?

7 Q. If I told you you gave this statement on July 23rd,  
8 1996, would that refresh your recollection at all?

9 A. Yes.

10 Q. So you waited six months to tell the police about  
11 this?

12 A. I didn't know nothing about that murder case.

13 Q. You didn't know anything about it?

14 A. No.

15 Q. You didn't --

16 You knew, you were a friend of Antwan Harvey, is that  
17 correct?

18 A. Yes.

19 Q. You didn't know in January that he had been arrested?

20 A. No.

21 Q. How about Marvin Mathis, he was a friend, did you know  
22 he had been arrested in January?

23 A. No.

24 Q. April and Renee Diggs?

25 A. No.

HERNANDEZ - CROSS BY FLORCZAK

173

1 Q. They used to come over your house regularly?

2 A. Yes.

3 Q. Did you wonder why they stopped coming?

4 A. They wasn't coming -- They was going to see Stephen Owens.

5 Q. They are friends of Stephen's, not yours?

6 A. That was my apartment.

7 Q. Okay. So you had no idea if they were arrested and  
8 you had no idea why they stopped coming?

9 A. No.

10 Q. Did the police come to you in July?

11 A. Yes.

12 Q. Now, when this happened back in January Antwan Harvey  
13 was over your house virtually every day, isn't that true?

14 A. Yes.

15 Q. He was the one that was close to Steve, isn't that  
16 true?

17 A. Yes.

18 Q. Now, you have come here today and you said you told  
19 the police that someone said they had a gun. Is that true?

20 A. Yes.

21 Q. And you were in your living room when you heard  
22 someone say that?

23 A. Yes. When they were walking out.

24 Q. They were walking out the door, and you heard someone  
25 say they had a gun, is that true?

HERNANDEZ - CROSS BY FLORCZAK

174

1 A. Yes.

2 Q. You didn't see any gun?

3 A. No.

4 Q. Can you tell us whether it was male or female that  
5 said they had a gun?

6 A. I don't remember.

7 Q. Sure it wasn't Steve saying he had a gun?

8 A. No.

9 Q. When you heard it were any of them totally out the  
10 door or were they all still in the room?

11 A. When I heard they say they had a gun they was walking out  
12 the door.

13 Q. Well, was, when you heard that could you see all four  
14 people?

15 A. Yes.

16 Q. So nobody was out the door yet?

17 A. They was opening the door to walk out.

18 Q. And Steve wasn't with them?

19 A. No.

20 Q. Could you see Steve at that time when you heard this  
21 said?

22 A. No. He was in the room.

23 Q. Can you give us any idea what time this was?

24 A. I don't know what time it was.

25 Q. Do you have any idea what time they returned?

HERNANDEZ - CROSS BY FLORCZAK

175

1 A. About an hour.

2 Q. But you don't know what time it was?

3 A. No.

4 Q. Are you sure it was January 22nd?

5 A. Yes.

6 Q. Why?

7 A. Because that's when everything happened.

8 Q. When what happened?

9 A. When they start asking me questions what happened January  
10 22nd, so I told them what happened.

11 Q. So you were aware of what happened?

12 A. When the police came and asked me questions.

13 Q. Was that in July or was that sooner?

14 A. That was in July.

15 Q. They didn't come asking you questions before that?

16 A. No.

17 Q. But you lived at the same address in the same  
18 apartment as you did in January?

19 A. Yes.

20 MR. FLORCZAK: I have nothing further, your Honor.

21 Thank you.

22 THE COURT: Mr. Kolano.

23 MR. KOLANO: Nothing further, your Honor.

24 THE COURT: Miss Hernandez, you may step down. Thank  
25 you. You are excused.



- COLLOQUY -

176

1 THE COURT: Counsel approach.

2 (Side bar off the record).

3 THE COURT: I have some matters to attend to with the  
4 attorneys that's going to take a couple of minutes. I want to  
5 excuse you to the jury room. We will try to get this done as  
6 quickly as possible and get you back out. You are excused to  
7 the jury room.

8 Remember not to discuss the case.

9 (Jury withdrew from the courtroom.)

10 THE COURT: Can we arrange to get Miss Diggs, April  
11 Diggs now.

12 THE COURT: Maybe we can bring her in and have her set  
13 up in the witness stand.

14 A P R I L D I G G S

15 Sworn as a witness and testified as follows:

16 DIRECT EXAMINATION BY MR. KOLANO:

17 OFFICER: If the prosecutor asks you to walk up to a  
18 map or exhibit, all right, just do whatever he tells you to do.  
19 Okay?

20 THE WITNESS: Yes.

21 THE COURT: Let's please have the jurors brought out.

22 (Jury seated in the jury box in the courtroom.)

23 THE COURT: Ladies and gentlemen, the next witness in  
24 the matter is April Diggs who is already seated in the witness  
25 stand, she has already been sworn by the clerk and is presently

APRIL DIGGS - DIRECT BY KOLANO

177

1 at this time under oath.

2 Mr. Kolano.

3 Q. Miss Diggs, how old are you?

4 A. Nineteen.

5 Q. And on January 22nd, 1996 how old were you?

6 A. Seventeen.

7 Q. And do you know Marvin Mathis?

8 A. Yes.

9 Q. Do you see him in the courtroom?

10 A. Yes.

11 Q. Could you please identify him?

12 A. Right there (indicating).

13 THE COURT: Indicating the defendant.

14 Q. Back in January of 1996, how long had you known  
15 Marvin?

16 A. About good two years.

17 Q. What was your relationship between you and Marvin  
18 Mathis?

19 A. Just a friend.

20 Q. Back in 1996, January, did you know Antwan Harvey?

21 A. Yes.

22 Q. How long had you known him?

23 A. Like, I don't know, about a month or two, three months,  
24 something like that.

25 Q. What was your relationship to Antwan Harvey?

APRIL DIGGS - DIRECT BY KOLANO

178

1 A. A friend.

2 Q. And who was Renee Diggs?

3 A. My cousin.

4 Q. Were you and your cousin Renee close?

5 A. Yes.

6 Q. Renee older than you or younger?

7 A. Older than me.

8 Q. On January 25th, 1996, were you arrested?

9 A. Yes.

10 Q. Were you charged with being involved in a robbery and  
11 killing of an Antonio Saraiva on January 22nd 1996?

12 A. Yes.

13 Q. Did you have -- You were a juvenile at the time?

14 A. Yes.

15 Q. And you were handled as adult subsequently?

16 A. Yes.

17 Q. Did you enter a plea of guilty to charges?

18 A. Yes.

19 Q. And you pled guilty to armed robbery?

20 A. Yes.

21 Q. And your recommendation of the sentence you are going  
22 to get is fifteen years in state prison?

23 A. Yes.

24 Q. And at least five, a five year parole disqualifier?

25 A. Yes.

APRIL DIGGS - DIRECT BY KOLANO

179

1 Q. And this, part of that plea you made with another  
2 assistant prosecutor in my office who represented my office?

3 A. Yes.

4 Q. And you agreed to testify truthfully in the trial  
5 against Marvin Mathis?

6 A. Yes.

7 Q. Did you also agree to testify truthfully in the trial  
8 of Antwan Harvey?

9 A. Yes.

10 Q. And you are aware as you sit here today that the trial  
11 of Antwan Harvey is going to start in approximately two weeks?

12 A. Yes.

13 Q. And that you are obligated to come back to court again  
14 in two weeks and testify truthfully as it relates to Antwan  
15 Harvey's role?

16 A. Yes.

17 Q. On January 25th, 22nd, 1996, did you know Migdalia  
18 Hernandez?

19 A. Yes.

20 Q. Do you know, did you know where she lived?

21 A. Yes.

22 Q. Where did she live?

23 A. On Third Street. 224 I guess.

24 Q. Did you know Stephen Owens?

25 A. Yes.

APRIL DIGGS - DIRECT BY KOLANO

180

1 Q. And where did he live back then?

2 A. In Migdalia house.

3 Q. Did you -- Had you ever been to Migdalia's house?

4 A. Yes.

5 Q. Were you there regularly back in January of '96 and  
6 before that?

7 A. Yes, couple of times.

8 Q. Was Renee there regularly?

9 A. Yes, with me.

10 Q. And Antwan?

11 A. Yes.

12 Q. And Marvin?

13 A. Yes.

14 Q. On the evening of the 22nd of January, 1996, do you  
15 recall meeting somebody at Third and Bond?

16 A. Yes.

17 Q. Where specifically were you at Third and Bond?

18 A. Chinese restaurant.

19 Q. Who were you there with at that time?

20 A. Me and my cousin Renee.

21 Q. And who else joined you?

22 A. Marvin Mathis and Antwan Harvey.

23 Q. Where did the four of you go from there?

24 A. We started walking.

25 Q. And where did you walk? After you left the Chinese

APRIL DIGGS - DIRECT BY KOLANO

181

1 restaurant where did you start walking to?

2 A. We started walking towards the Ave.

3 Q. When you say the Ave, what do you mean?

4 A. Elizabeth Ave.

5 Q. And where did you think you were going?

6 A. To the store.

7 Q. For what?

8 A. Liquor.

9 Q. And did there come a point in time where those plans  
10 were changed or announced that there was a change in those  
11 plans?

12 A. Yes.

13 Q. Please tell me about that.

14 A. When we got like by I guess it was Seventh Street, over  
15 there by the pharmacy, it was like Antwan Harvey was like he  
16 wanted to go rob somebody, and he wanted us to be the lookout.

17 Q. And did you agree to be the lookout?

18 A. I didn't say nothing. But I kept walking with him.

19 Q. And Renee, what was her role at that point?

20 A. She was the lookout, too.

21 Q. And Marvin, what was his role?

22 A. At the time he was, he didn't say nothing.

23 Q. Did there come a point in time where Marvin did say  
24 something?

25 A. Yes.

APRIL DIGGS - DIRECT BY KOLANO

182

1 Q. Please tell us about that.

2 A. Antwan said, Antwan stated that, he said that something  
3 about busting somebody or something, and Marvin said I would do  
4 it too, and Antwan gave Marvin the gun.

5 Q. Where did this take place?

6 A. Right there by the pharmacy.

7 Q. Where was the pharmacy in relation to the Portuguese  
8 American Liquor Store?

9 A. Right across the street from, like a few feet away from it.

10 Q. Did you see Antwan give Marvin the gun at that point?

11 A. Yes.

12 Q. Do you remember what color gun it was?

13 A. It was a black gun.

14 Q. Do you remember anything more about the gun?

15 A. It was little.

16 Q. Since that time, has anybody ever showed you any guns  
17 to ask you if it was the gun or not?

18 A. No.

19 Q. I am going to show you what has been marked S-22 for  
20 identification.

21 Open and clear.

22 Do you know if this was the gun or not?

23 A. No. That wasn't the gun.

24 Q. It wasn't. This first time you are seeing this?

25 A. Yes.

APRIL DIGGS - DIRECT BY KOLANO

183

1 Q. How do you know this wasn't the gun?

2 A. Because it had a black handle on it.

3 Q. And this one has what color handle?

4 A. Brown.

5 Q. Do you know if that gun also had a revolver?

6 A. No.

7 Q. You don't know or it didn't?

8 A. I don't know.

9 Q. When Antwan said that he was going to or was prepared  
10 to bust someone what did you know that to mean?

11 A. That he was going to shoot somebody.

12 Q. And what did Marvin say when Antwan --?

13 A. He would do the same.

14 Q. And that's when Antwan gave Marvin the gun?

15 A. Yes.

16 Q. How long did Marvin have the gun before the actual  
17 shooting took place?

18 A. About like two or three minutes.

19 Q. Tell me what happened after Marvin got the gun after  
20 indicating that he, too, would bust someone?

21 A. A man was coming out of his house with the garbage, and  
22 they both just -- Antwan ran first over there towards the man,  
23 and Marvin followed.

24 Q. And what were you doing at that time?

25 A. I was walking towards the deadend street.



APRIL DIGGS - DIRECT BY KOLANO

184

1 Q. And tell us everything that you saw, heard, and  
2 remember from the point where Antwan ran to the guy and then  
3 Marvin ran to the guy?

4 A. Next I just heard gunshots, and I turned around, and Renee  
5 was walking towards me, and she said, I asked her did Marvin  
6 shoot that man and she --

7 MR. FLORCZAK: Objection to what she was told.

8 MR. KOLANO: At this point it could also be a  
9 statement in furtherance.

10 THE COURT: Let's just let's keep it in logical  
11 sequence. I suppose I think the question indicates what she  
12 did. I suppose the next question may very well touch upon what  
13 you are saying, but I am not sure.

14 Q. How many shots did you hear?

15 A. One or two.

16 Q. As Antwan and Marvin approached the man taking out the  
17 garbage who had the gun?

18 A. Marvin.

19 Q. When you heard the shots, where were you standing?

20 A. On the corner at a dead-end street.

21 Q. And was that -- did you turn around when you heard the  
22 shots?

23 A. Yes.

24 Q. When you turned around what did you see?

25 A. I seen the man fall on the floor. I seen them ran around

APRIL DIGGS - DIRECT BY KOLANO

185

1 to the liquor store.

2 Q. Did Renee say something, did you ask something of  
3 Renee?

4 A. Yes. She came towards me, and I said, Did Marvin shoot  
5 that man? She said Yeah. I said Where did he shoot the man?  
6 She said In the chest. I say the way he fell looked like he  
7 got shot in the head.

8 Q. And which direction did Marvin and Antwan run?

9 A. Around the corner from the Chinese store.

10 Q. Which direction did you leave?

11 A. Down at that deadend street.

12 Q. Was that in the same direction or opposite direction  
13 as Antwan and Marvin?

14 A. Opposite.

15 Q. What direction did Renee go?

16 A. The same with me.

17 Q. Did you see after the shots, when Marvin and Antwan  
18 ran, if either one of them had the gun?

19 A. No, I didn't.

20 Q. Was there talk of --

21 Did you know the man who was shot and killed?

22 A. Not at the moment. But after it was all done with.

23 Q. But at that time you didn't know the man?

24 A. No.

25 Q. Did you have any beef with him then?

APRIL DIGGS - DIRECT BY KOLANO

186

1 A. No.

2 Q. Did anybody, Marvin or Antwan or Renee, express that  
3 they had any beef or any animosity towards the man?

4 A. No.

5 Q. Do you know the reason why the man was shot?

6 MR. FLORCZAK: Objection, your Honor. Unless it's of  
7 her own personal knowledge, we are speculating.

8 MR. KOLANO: Part and parcel of conspiracy.

9 THE COURT: Overruled.

10 Q. If you know, do you know why the man was shot?

11 A. No, I don't know.

12 Q. What was the purpose of going to the man?

13 A. To rob him.

14 Q. And you were aware that he was going to be robbed?

15 A. Yes.

16 Q. But you pled guilty to your involvement in that  
17 robbery?

18 A. Yes.

19 Q. I don't know if this was answered.

20 Did Renee express that she had any beef with this man?

21 A. No.

22 Q. To your knowledge did Renee know the man?

23 A. Not that I know of.

24 Q. Did Antwan express any animosity or beef with the man  
25 who was shot?

APRIL DIGGS - DIRECT BY KOLANO

187

1 A. No.

2 Q. Did Marvin express any beef or animosity towards the  
3 man that was shot?

4 A. No.

5 Q. After the two men ran in one direction and you and  
6 your cousin went in another direction where did you go?

7 A. We went to Migdalia house.

8 Q. And did you and Renee get there?

9 A. Yes.

10 Q. Did you see Marvin Mathis there?

11 A. Yes.

12 Q. Please tell me where you saw Marvin and what was said  
13 between you and him?

14 A. Marvin was coming down the stairs. And I said to Marvin  
15 Why did you shoot that man? And Marvin stated because the man  
16 grabbed him.

17 Q. Is this the last conversation you had with Marvin  
18 about this event?

19 A. That day, yes.

20 Q. Did you have another conversation with Marvin about  
21 this event since that day?

22 A. No.

23 Q. Did you have any other conversations with Marvin about  
24 this event?

25 A. No.

APRIL DIGGS - DIRECT BY KOLANO

188

1 Q. When you were arrested, did you give a statement to  
2 the police?

3 A. Yes.

4 Q. I am going to show you what has been marked S-46 for  
5 identification, and ask you to look at it.

6 Do you recognize that?

7 A. Yes.

8 Q. Is this a copy of the statement that you gave to the  
9 police?

10 A. Yes.

11 Q. And who is Darlene Doshier?

12 A. My mother.

13 Q. Was she present when you gave the statement to the  
14 police?

15 A. Yes.

16 Q. And there are initials on the bottom of each of these  
17 pages, AD, whose initials are AD?

18 A. Mine.

19 Q. You put them there?

20 A. Yes.

21 Q. And signature there that I am pointing to, whose is  
22 that.

23 A. Mine.

24 Q. And signature below that?

25 A. My mother's.

APRIL DIGGS - DIRECT BY KOLANO

189

1 Q. And this started at about twelve o'clock in the  
2 afternoon?

3 A. Yes.

4 Q. On January 25th, 1996?

5 A. Yes.

6 Q. Did you know that the police were coming to arrest  
7 you?

8 A. No.

9 Q. At the time of the shooting the police took you  
10 immediately upon arrest to police headquarters?

11 A. Yes.

12 Q. Did they take you in a separate car from Renee?

13 A. Yes.

14 Q. Renee was arrested at the same time?

15 A. Yes.

16 Q. Where did Renee live in relationship to you?

17 A. In the next court.

18 Q. Pioneer Homes?

19 A. Yes.

20 Q. Were you and Renee permitted to be together when you  
21 were at headquarters or were you kept separate?

22 A. We were separate.

23 Q. At the time of the shooting what kind of sneakers or  
24 what kind of footwear did you have on?

25 A. Some pink Reebok.

APRIL DIGGS - DIRECT BY KOLANO

190

1 Q. Did the police take them?

2 A. Not that I know of.

3 Q. Let me show you what has been marked S-30 for  
4 identification. Do you recognize these?

5 A. Yes.

6 Q. What are they?

7 A. My pink Reeboks.

8 Q. These are the ones you were wearing the night of the  
9 shooting?

10 A. Yes.

11 Q. Do you remember what Renee was wearing?

12 A. I know she had a Tommy Hilfiger jacket on, black jeans.

13 Q. Do you remember what color the jacket was?

14 A. Yes. It was white red and blue.

15 Q. Showing you what has been marked S-27 for  
16 identification, and ask you to look at it. Do you recognize  
17 that?

18 A. Yes.

19 Q. What is that?

20 A. Renee's jacket.

21 Q. Was this what she was wearing at the time of the  
22 robbery and shooting?

23 A. Yes.

24 Q. Did she -- Which way did she have it turned?

25 A. Inside out.

APRIL DIGGS - DIRECT BY KOLANO

191

1 Q. Do you remember what Antwan was wearing at the time of  
2 the shooting?

3 A. Blue Hilfiger jacket.

4 Q. How did he have it turned?

5 A. Inside out.

6 Q. What color was showing?

7 A. The yellow.

8 Q. Showing you what is marked S-26 for identification, I  
9 ask you to look at it. Do you recognize that?

10 A. Yes.

11 Q. What is this?

12 A. Marvin, I mean, excuse me, Antwan's jacket.

13 Q. So he had it so that the gold was showing?

14 A. Yes.

15 Q. Or yellow. Do you know why he had it so that the  
16 yellow was showing?

17 A. So just -- I don't know.

18 Q. Do you know when he turned it inside out so that the  
19 yellow was showing?

20 A. No.

21 Q. Do you remember what Marvin Mathis was wearing, what  
22 kind of coat he had?

23 A. He had First Down on.

24 Q. What color, white or dark?

25 A. Dark.



APRIL DIGGS - DIRECT BY KOLANO

192

1 Q. Showing you what is marked S-25 for identification. I  
2 ask you to look at it. Do you recognize that?

3 A. Yes.

4 Q. And is this the jacket that Marvin had on that night?

5 A. Yes.

6 Q. And at that time it was black on the inside and  
7 outside?

8 A. Yes.

9 Q. Which way was he wearing it?

10 A. Regular.

11 Q. Was there a ski mask involved?

12 A. I don't remember.

13 Q. I am going to show you what's marked S-28 for  
14 identification. I ask you to look at it and tell me whether or  
15 not you recognize it, if you do?

16 Don't remember?

17 A. No.

18 MR. KOLANO: Your Honor, if I may, with the court's  
19 indulgence for a moment.

20 THE COURT: Yes.

21 (Pause).

22 Q. Miss Diggs, if you would please step down. Just stand  
23 here.

24 Showing you what has been marked --

25 Stand here please.

APRIL DIGGS - DIRECT BY KOLANO

193

1 S-6 for identification, do you recognize that?

2 A. Yes.

3 Q. And what is that?

4 A. Liquor store.

5 Q. The jury has seen this picture.

6 If you would, please point out where you and Renee were  
7 before you started to leave the scene. Step on my side. Just  
8 point out, if you can.

9 A. Right about here.

10 Q. Is there an alley down that way?

11 A. No.

12 Q. Okay. Where is the alley?

13 A. You got to go back some more.

14 Q. And you went back that way and down the alley?

15 A. Still straight. This is not the whole street.

16 Q. Okay. I am going to ask you to repeat that over here  
17 for people over this end need to see it also.

18 Point out best you can on this picture where you were.

19 And you went over this way and down that way?

20 A. Straight.

21 Q. Straight? Which way? Show.

22 A. Straight this way.

23 Q. Now, would you point out which direction Antwan and  
24 Marvin went?

25 A. That way.

APRIL DIGGS - DIRECT BY KOLANO

194

1 Q. And you are pointing to as the jury is looking at the  
2 picture to the jury's right, to my left?

3 A. Yes.

4 Q. What store, what establishment is this here?

5 A. Right next door Chinese store.

6 Q. They ran towards Chinese store?

7 A. Yes.

8 Q. I am going to do this all over again so everyone on  
9 this end can see.

10 Where was, which way did Marvin and Antwan go?

11 A. This way.

12 Q. Down on this side here?

13 A. Yes.

14 Q. And you were on this end?

15 A. Yes.

16 Q. You and Renee?

17 A. Yes.

18 Q. Where were you standing when the shots were actually  
19 fired or the shot?

20 A. Right at the corner of this house.

21 Q. Actually on the street, though?

22 A. Yes.

23 Q. You hadn't turned down the alley yet?

24 A. No.

25 MR. FLORCZAK: What number was that?

APRIL DIGGS - DIRECT BY KOLANO

195

1 MR. KOLANO: That's S-6.

2 I am going to ask you to remain there, please.

3 Q. You haven't seen this before, have you?

4 A. No.

5 Q. I am going to ask you to step over here to the side.

6 Take your time. Take a look at it. See if you recognize some  
7 of the landmarks there or some of the names of the roads.

8 A. This is East Jersey Street.

9 Q. Is this, this is where it happened?

10 A. Yes.

11 Q. Okay. As best you can, on this picture, would you  
12 just use this pointer and show us where you and Renee went?

13 Use the pointer so the jury can see, please.

14 A. Went by right here, went up alleyway.

15 Q. Okay. And then how did you end up at Third Street and  
16 Migdalia's?

17 A. We zigzag through blocks. I don't remember.

18 Q. Okay. But at some point you ended up here at Third  
19 Street at Migdalia's?

20 A. Yes.

21 Q. And which way on this diagram did the two men run?

22 A. They ran this way. By -- I don't know where the Chinese  
23 store is, but around the corner from that Chinese store.

24 Q. Was the Chinese store also on East Jersey Street?

25 A. Yes.

APRIL DIGGS - DIRECT BY KOLANO

196

1 Q. And was that intersected by Seventh Street?

2 A. Yes.

3 Q. And in fact when you had come up to the store, did you  
4 come up Seventh and make the left on to East Jersey?

5 A. Yes.

6 Q. You can return to your seat.

7 Was there an establishment on the street as landmark as to  
8 where the gun was handed off from Antwan to Marvin?

9 A. Excuse me?

10 Q. Was there a pharmacy anywhere in the neighborhood?

11 A. Yes.

12 Q. Where was the pharmacy in relationship to where Antwan  
13 gave Marvin the gun?

14 A. In the beginning of the pharmacy, in the back, by the  
15 parking lot.

16 Q. And where was the pharmacy in relationship to the  
17 liquor store where the man was shot?

18 A. Right across the street.

19 Q. And the statement that you gave to the police when you  
20 were arrested on the 25th, who did you say was the person who  
21 shot the gun?

22 A. Marvin Mathis.

23 Q. When you pled guilty, who did you say it was that shot  
24 the gun?

25 A. Marvin Mathis.

APRIL DIGGS - DIRECT BY KOLANO

197

1 Q. Who is it who shot the gun to your knowledge?

2 A. Marvin Mathis.

3 Q. And it was Antwan's idea to do the robbery initially.

4 Whose idea was it to do a robbery initially?

5 A. I don't remember.

6 MR. KOLANO: Nothing further.

7 THE COURT: We will take a briefer recess at this  
8 point before the cross examination.

9 Ladies and gentlemen, I want to remind you not to  
10 engage in any discussions regarding the case.

11 You are free during this recess to leave the  
12 courtroom. When you return in, make it no more than fifteen  
13 minutes, assemble inside the jury room.

14 (Jury withdrew from the courtroom.)

15 (Short Recess).

16 THE COURT: Please bring out the jurors.

17 (Jury seated in the jury box in the courtroom.)

18 THE COURT: Mr. Florczak, cross examination.

19 MR. FLORCZAK: Thank you.

20 CROSS EXAMINATION BY MR. FLORCZAK:

21 Q. Miss Diggs, you pleaded guilty to aiding and abetting  
22 a first degree robbery, is that correct?

23 A. Yes.

24 Q. And as a result you are to be sentenced in the future?

25 A. Yes.

APRIL DIGGS - CROSS BY FLORCZAK

198

1 Q. You haven't been sentenced yet?

2 A. No.

3 Q. Part of the agreement is to wait and see what you say  
4 today and at the next trial before they give you your sentence,  
5 is that true?

6 A. It's a plea agreement.

7 Q. Your plea agreement is that you are not to be  
8 sentenced until after you testify in these two cases?

9 A. Yes.

10 Q. If your testimony is satisfactory then you will  
11 receive a sentence of fifteen years with up to five year parole  
12 disqualifier?

13 MR. KOLANO: Objection, your Honor.

14 It's truthful, not satisfactory.

15 THE COURT: I will sustain the objection.

16 If you will, rephrase the question.

17 Q. The sentence you are to receive is fifteen years with  
18 a five year parole disqualifier, is that correct?

19 A. Yes.

20 Q. Now, when you gave your statement didn't you in effect  
21 say you didn't do anything?

22 A. Yes.

23 Q. Is that true?

24 A. I was the lookout.

25 Q. Didn't you say in your statement that you didn't look

APRIL DIGGS - CROSS BY FLORCZAK

199

1 out?

2 A. I don't remember.

3 Q. Do you have the statement up there?

4 A. No.

5 Q. Okay. You have a copy, right?

6 And I refer you to page five. First let me ask you if you  
7 recognize this document. Does it contain your signature?

8 A. Yes.

9 Q. Do you recognize this?

10 A. Yes.

11 Q. Do you remember being asked down here:

12 So when this robbery came down did all four of you  
13 voluntarily participate?

14 Remember being asked that?

15 A. Yes.

16 Q. And you answered: I didn't know the man was going to  
17 get shot. I told them I wasn't going to participate. That's  
18 why I was walking ahead of them.

19 A. Yes.

20 Q. Did you say that?

21 A. Yes.

22 Q. Was that true?

23 A. Yes.

24 Q. So you didn't intend to participate?

25 A. I don't get what you are saying.



APRIL DIGGS - CROSS BY FLORCZAK

200

1 Q. Let me ask you another question.

2 Did you actually look out?

3 A. Not really.

4 Q. And isn't it true the reason you pled guilty was  
5 because they were dismissing a charge of felony murder for  
6 which you could get life with up to thirty years without  
7 parole?

8 A. Yes.

9 Q. That's why you pled guilty?

10 A. Yes.

11 Q. Now, you met up with them, with the two young men, at  
12 what time?

13 A. At the Chinese store.

14 Q. Do you remember what time?

15 A. About nine or something like that.

16 Q. Okay. If your statement said 9:45, would that be  
17 close?

18 A. Yes.

19 Q. Now, did you go in at that time, when you met up with  
20 them, did you go into the apartment of Migdalia Hernandez?

21 A. Not at that time. No.

22 Q. Did your sister, was your sister with you?

23 A. My cousin, yes, she was.

24 Q. I am sorry. Your cousin Renee, was she with you?

25 A. Yes.

APRIL DIGGS - CROSS BY FLORCZAK

201

1 Q. Did she at any time leave you at the apartment at that  
2 time?

3 A. Not that I know of.

4 Q. Well, you know whether she left you?

5 A. No. She walked out to talk to Antwan, probably, or  
6 whatever he was doing, for a minute or two.

7 Q. Where?

8 A. Outside of the Chinese restaurant.

9 Q. Okay. And at the Chinese restaurant it was decided  
10 that you guys would walk towards Elizabeth Avenue?

11 A. We were going, yes.

12 Q. And did you tell them to wait until you got your -- ?

13 A. Chicken wings.

14 Q. Before you left, and did you get your chicken wings?

15 A. Yes.

16 Q. As you are walking towards Elizabeth Avenue, is that  
17 what you were doing?

18 A. Yes.

19 Q. You start to walk towards Elizabeth Avenue?

20 A. Yes.

21 Q. Did Antwan or anyone else chase any other people  
22 besides what ended up happening here?

23 A. No, not that I know of.

24 Q. Two Hispanic men didn't get chased down the street, as  
25 far as you remember?

APRIL DIGGS - CROSS BY FLORCZAK

202

1 A. No.

2 Q. Did anybody talk about robbing the deli?

3 A. No.

4 Q. So you didn't hear Marvin say Don't do it, Don't rob  
5 the deli?

6 A. No.

7 Q. Okay. Now, when you guys were walking down the  
8 street, did at any point Antwan pull out the gun and start  
9 waving it around acting crazy?

10 A. Not that I remember.

11 Q. Well, at any time while you are walking down the  
12 street did he pull out the gun at all?

13 A. Only when he was passing to Marvin.

14 Q. And where was that?

15 A. By the pharmacy.

16 Q. And this was after Antwan said he was going to bust  
17 someone?

18 A. Few minutes. Yes. Couple of minutes before that.

19 Q. This is before Antwan said he was going to bust  
20 someone that he gave him the gun or after?

21 A. He said he would bust somebody, and Marvin said that he  
22 will bust somebody too; and that's when he was like Here, and  
23 he gave Marvin the gun.

24 Q. So how old was Antwan, do you recall?

25 A. I have no idea how old he was.

APRIL DIGGS - CROSS BY FLORCZAK

203

1 Q. He was older than Marvin?

2 A. Yes.

3 Q. And he just gave up the gun?

4 A. Yes.

5 Q. After this all happened did all, did you guys meet  
6 back somewhere?

7 A. Yes.

8 Q. Then at that time did Antwan tell you to say that  
9 Marvin was the guy who shot the gun?

10 A. No.

11 Q. Next day he didn't tell you that?

12 A. No.

13 Q. Did you see him the next day?

14 A. No, I didn't.

15 Q. What about the day after?

16 A. Maybe the day after I seen him walking through.

17 Q. And what about Renee, were you with her during those  
18 couple of days?

19 A. Yes.

20 Q. Before you got arrested?

21 A. Yes, I was.

22 Q. Were you aware that Marvin had gotten arrested?

23 A. Yes, I was.

24 Q. How did you learn about Marvin being arrested?

25 A. His girlfriend told me.

APRIL DIGGS - CROSS BY FLORCZAK

204

1 Q. What did his girlfriend tell you?

2 A. That Marvin turn his self in the school.

3 Q. When did she tell you that?

4 A. Like at nighttime, it was about, nighttime, dark time.

5 Q. Now, this, this shooting you were walking away when it  
6 occurred, right?

7 A. Yes, I was.

8 Q. So you weren't going to help in any way?

9 A. No.

10 Q. And as you were walking away you heard a shot or two  
11 shots, one or two?

12 A. Yes.

13 Q. So at that point you weren't looking where the shots  
14 were coming from. You turned around after you heard the shots?

15 A. Yes.

16 Q. You didn't see the shots fired?

17 A. No.

18 Q. It was your, Renee ran up to you and said Marvin shot  
19 him, isn't that true?

20 A. Yes.

21 Q. Now, after the man was down, you saw Marvin and Antwan  
22 take off and run?

23 A. Yes.

24 Q. You didn't see them going through his pockets, did  
25 you?

APRIL DIGGS - CROSS BY FLORCZAK

205

1 A. No.

2 Q. In fact did you see somebody going through his  
3 pockets?

4 A. Yes.

5 Q. And after they had ran off you saw a man standing over  
6 the victim, isn't that true?

7 A. Yes.

8 Q. Do you know who that man was?

9 A. Jamaica.

10 Q. So you know him from the neighborhood?

11 A. Yeah. I seen him a couple of times.

12 Q. You saw him go through the man's pockets?

13 A. Yes.

14 Q. Did you see what he did then?

15 A. No. We started walking.

16 Q. Who?

17 A. Me and my cousin Renee.

18 Q. And when you gave the statement to the police on  
19 January 5th, 19', January 25th, 1996, you told the police that  
20 Jamaica had gone through his pockets after, while he was lying  
21 on the ground?

22 A. Yes.

23 Q. Now, during this whole, while you guys were walking  
24 down the street nobody was wearing any kind of masks, were  
25 they?

APRIL DIGGS - CROSS BY FLORCZAK

206

1 A. I don't remember.

2 Q. Did you see any mask?

3 A. I don't remember.

4 Q. Do you remember seeing people's faces while you are  
5 walking with them?

6 A. While I was walking with who?

7 Q. You were walking with Marvin Mathis and Antwan Harvey?

8 A. Yes.

9 Q. And Renee?

10 A. Yes.

11 Q. Do you remember anybody wearing a mask?

12 A. No, I don't remember.

13 Q. Now, after you were arrested you were taken to Union  
14 County detention center?

15 A. Yes.

16 Q. Did you, at the detention center did you talk to  
17 anyone about this incident?

18 A. Yeah, it was few people asking me questions.

19 Q. Did you talk to Miss Garcia?

20 A. The social worker?

21 Q. Yes.

22 A. Yes.

23 Q. Didn't you in fact tell her that Marvin didn't shoot  
24 anyone, that it was Antwan?

25 A. I don't recall saying that.

APRIL DIGGS - CROSS BY FLORCZAK

207

1 Q. Well, do you know whether you said that or not?

2 A. No.

3 Q. You -- ?

4 A. I doubt if I said that.

5 Q. After this incident where did you see Marvin and  
6 Antwan again that night? After you ran in different direction  
7 with Renee where did you meet up with them?

8 A. At Migdalia's house.

9 Q. Did you go into the house?

10 A. Yes.

11 Q. All four of you go in?

12 A. No. They was already there.

13 Q. How much later did you -- well?

14 A. I don't know.

15 Q. All right. I am sorry I asked.

16 They were already seated or in the apartment when you and  
17 Renee got there?

18 A. Antwan was in there, Marvin was coming down the stairs,  
19 when me and Renee came.

20 Q. Antwan was leaving -- I am sorry. Marvin was leaving,  
21 and you were going up?

22 A. Yes.

23 Q. So that when you went up to the apartment there was  
24 just Antwan there along with perhaps Steve and Migdalia?

25 A. Yes.



APRIL DIGGS - CROSS BY FLORCZAK

208

1 Q. And Marvin had left?

2 A. He was on the stairs talking, the stairway.

3 Q. How long were you walking before you got to, from  
4 the -- strike that.

5 Where is this Chinese store you met them at, where is it  
6 located?

7 A. Right on Third Street across the street from Migdalia's  
8 house.

9 Q. How long were you walking before you got to Seventh  
10 and East Jersey?

11 A. I don't know. I didn't have no watch on.

12 Q. While you were walking, how long was it before you  
13 were aware that Antwan had a gun?

14 A. I don't know.

15 Q. During this walk did Antwan ever threaten to shoot  
16 some cops?

17 A. No. Only he said that one time that he was going to bust  
18 somebody.

19 Q. Do you know whether or not that meant rob or whether  
20 it meant -- ?

21 A. He --

22 Q. -- shoot?

23 A. He said if there was resistance he would bust them.

24 Q. If they resisted he would bust them?

25 A. Yes.

APRIL DIGGS - CROSS BY FLORCZAK

209

1 Q. That's what Antwan said?

2 A. And that's when Marvin said, I would do the same.

3 Q. And this was at Seventh and East Jersey, is that  
4 correct?

5 A. By the pharmacy. Yes.

6 Q. And at that time Antwan ran up toward the man alone?

7 A. First.

8 Q. Initially, at first?

9 A. Yes.

10 Q. Without any gun?

11 A. Without no gun.

12 Q. Before you gave your statement to the police, how long  
13 were you at the police station, do you know, do you know what  
14 time you were arrested?

15 A. It was in the morning, early in the morning.

16 Q. Did they tell you how they came to arrest you?

17 A. They just said I have a warrant for April Diggs homicide.

18 Q. Did they tell you where they got the information from?

19 A. They didn't say none of that.

20 Q. Now, how long do you say you had known Marvin?

21 A. About like two years.

22 Q. How long had you known Antwan?

23 A. Couple of months.

24 Q. And where did you meet Antwan?

25 A. On Third Street.

APRIL DIGGS - CROSS BY FLORCZAK

210

1 Q. No. I mean for the first time, before this happened.  
2 You said you knew him for couple of months when this happened.  
3 Do you remember where you first met him?

4 A. No.

5 Q. Did you see him at Miss Hernandez' apartment a lot?

6 A. Yeah.

7 Q. He was there almost every day, wasn't he, as far as  
8 you recall, or at least when you went?

9 A. Yes.

10 Q. Now, when you first saw this man, the man who was  
11 shot, where was he and where were you?

12 A. Excuse me?

13 Q. When you first saw the man who owned the liquor store  
14 who was shot what were you doing when you first saw him?

15 A. We was walking. They ran up to him, towards him.

16 Q. You were walking?

17 A. Yes.

18 Q. And what was the man doing?

19 A. Bringing out garbage bag, his garbage, I guess.

20 Q. At that point what happened?

21 A. Antwan ran up to the man.

22 Q. Was anything said, anybody say anything?

23 A. Yes. Antwan, Antwan was like We are going to get him right  
24 there.

25 Q. And he ran up to him?

APRIL DIGGS - CROSS BY FLORCZAK

211

1 A. Yes.

2 Q. Prior to that, there had been no talk specifically  
3 about robbing this particular man?

4 A. No, not that particular man.

5 MR. FLORCZAK: One second, your Honor. (Pause)

6 Q. In fact, it was Antwan who brought up robbing someone,  
7 isn't that true?

8 A. Excuse me?

9 Q. Wasn't it Antwan who brought up robbing someone?

10 A. Yes.

11 Q. In fact it was Antwan who told you that we are not  
12 going to the store, we are going to rob someone; isn't that  
13 true?

14 A. Yes.

15 Q. That's what you told the police back in January 25th,  
16 isn't that true?

17 A. Yes.

18 Q. When first Antwan and then Marvin ran over to the man  
19 you didn't hear anything said, did you?

20 A. No.

21 Q. You just kept on walking away?

22 A. Yes.

23 Q. Now, the prosecutor showed you a picture, S-6, now,  
24 and he asked you to show where you were when the shot was  
25 fired?

APRIL DIGGS - CROSS BY FLORCZAK

212

1 A. I was back there.

2 Q. Were you beyond, were you someplace in the picture or  
3 just beyond the picture?

4 A. Little bit beyond the picture.

5 Q. So where you were is not shown in the picture?

6 A. No.

7 Q. You were a little further away?

8 A. Yes.

9 Q. And in fact when it was mentioned that there might be  
10 a robbing, a robbery, didn't you tell the police on January  
11 25th that they said only maybe twice, do you recall that  
12 phrase?

13 A. Excuse me? I didn't hear the last part.

14 Q. You were asked while you were walking up the Avenue  
15 how many times did you discuss robbing someone. They said only  
16 maybe twice. Do you remember saying that?

17 A. No.

18 Q. Okay.

19 MR. FLORCZAK: I have nothing further. Thank you.

20 THE COURT: Mr. Kolano.

21 REDIRECT EXAMINATION BY MR. KOLANO:

22 Q. Mr. Florczak asked you some questions about pleading  
23 guilty, do you recall that?

24 A. Yes.

25 Q. And you had an attorney, is that correct?

APRIL DIGGS - REDIRECT BY KOLANO

213

1 A. Yes.

2 Q. And your attorney advised you as to the legality of  
3 what you had said in your statement?

4 A. Yes.

5 Q. And you discussed that with him prior to pleading  
6 guilty?

7 A. Yes.

8 Q. And you told the judge more than simply I am guilty.  
9 Is that correct?

10 A. Yes.

11 Q. In fact the judge asked, a different judge asked you a  
12 lot of questions; do you recall that?

13 A. Yes.

14 Q. And he had to hear the words out of your own mouth  
15 before the judge would decide whether or not to accept your  
16 plea?

17 A. Yes.

18 Q. And from your transcript, page six, the judge, Judge  
19 Barisonek asked you:

20 All right. January 22nd, 1996, in Elizabeth, who were you  
21 with and involved in this armed robbery of Antonio Saraiva, who  
22 was with you?

23 And you answered: Myself, Marvin, Antwan, and Renee; is  
24 that right?

25 A. Yes.

APRIL DIGGS - REDIRECT BY KOLANO

214

1 Q. You just fill in all the last names.

2 A. Yes.

3 Q. And the judge asked you another question:

4 And in fact who approached this individual on the street or  
5 in the house?

6 "Answer: Marvin and Antwan."

7 A. Yes.

8 Q. That's what you told the judge?

9 A. Yes.

10 Q. And that was true?

11 A. Yes.

12 Q. And the judge asked you the question:

13 And all of you shared the purpose that they were going to  
14 go up and in fact commit a robbery by using a gun and  
15 threatening this person to get his personal properties?

16 And you answered Yes to the judge's question?

17 A. Yes.

18 Q. Question, again by the judge: And all of you knew in  
19 fact -- who had the gun actually?

20 "Answer: Marvin."

21 Is that accurate?

22 A. Yes.

23 Q. That's what you told the judge?

24 A. Yes.

25 Q. And the judge asked you another question, and have a

APRIL DIGGS - REDIRECT BY KOLANO

215

1 purpose -- well -- start, higher up on page eight, counsel.

2 And did he in fact do that, go up and threaten the  
3 individual with the gun?

4 "Answer: Yes.

5 "Question: And have a purpose of getting that  
6 individual's money and or jewelry?

7 "Answer: Yes."

8 Did I read that accurately?

9 A. Yes.

10 Q. And those were the questions the judge asked you and  
11 the answers that you gave in pleading guilty?

12 A. Yes.

13 Q. And then assistant prosecutor Susan Mac Mullan asked  
14 you some questions. The judge invited her to ask questions and  
15 she did?

16 A. Yes.

17 Q. Does she say:

18 "Question: Isn't it true that right before Marvin  
19 and Antwan approached Tony, Antonio Saraiva, owner of the  
20 American Portuguese store on East Jersey Street is it true that  
21 before that Antwan Harvey gave Marvin Mathis the gun; isn't  
22 that true?

23 "Answer: Yes."

24 A. Yes.

25 Q. "Question: And isn't it true that Marvin Mathis is



APRIL DIGGS - REDIRECT BY KOLANO

216

1 the one who shot the vitim Antonio Saraiva during the robbery  
2 attempt?

3 "Answer: Yes."

4 A. Yes.

5 Q. And you had your attorney present during that entire  
6 proceeding?

7 A. Yes.

8 Q. And except for those last two questions that I said  
9 were asked by assistant prosecutor Mac Mullan it was the judge  
10 who was asking all the questions of you?

11 A. Yes.

12 Q. Your attorney told you you had to be truthful in  
13 talking to the judge?

14 A. Yes.

15 Q. Were you truthful?

16 A. Yes.

17 Q. And right from the beginning on the day you were  
18 arrested you gave the statement to the police that we talked  
19 about?

20 A. Yes.

21 MR. KOLANO: Counsel, do you have that statement?

22 A. Right here.

23 Q. Please turn to the second page.

24 And I am on page two, counsel.

25 Question that says: Where did you go from the Chinese

APRIL DIGGS - REDIRECT BY KOLANO

217

1 restaurant?

2 Then I am going down a few lines, it says: Antwan said we  
3 are not going to the store; I am going to tell you the truth,  
4 we are going to rob somebody. And then he said, You all don't  
5 have to do nothing, just watch out for the cops.

6 Did I read that accurately?

7 A. Yes.

8 Q. And then down further, says: Then we was walking  
9 home, and then we stopped at this place where Marvin and Antwan  
10 be at, and I asked Marvin Why did you shoot him? And he said  
11 he grabbed him.

12 When we was walking Antwan said I am just going bust them  
13 if they resist, and Marvin said I will do it, too. And Antwan  
14 said, Do you want me to give you the gun, and he said Yeah.  
15 Okay.

16 "Question: At that time did Antwan give Marvin the  
17 gun?

18 "Answer: Yeah.

19 "Question: Where were you at when he gave him the  
20 gun?

21 "Answer: Getting ready to turn on Seventh Street by  
22 the liquor store."

23 Is that what you told the police?

24 A. Yes.

25 Q. Was that true at that time?

APRIL DIGGS - REDIRECT BY KOLANO

218

1 A. Yes.

2 Q. Now, later on, couple of lines down:

3 "Question: Who wanted to rob the guy putting out  
4 the garbage?

5 "Answer: They both just ran over there."

6 Did I read that accurately?

7 A. Yes.

8 Q. And when you say they both just ran over there, which  
9 two people are you talking about?

10 A. Marvin and Antwan.

11 Q. So you told the police that right from the get-go?

12 A. Yes.

13 Q. On the next page, question over here: What was  
14 discussed?

15 "Answer: Marvin said he tried to grab me. And  
16 Renee said that the man owned the liquor store.

17 "Marvin said he was going to turn himself in, and  
18 Antwan said don't mention my name."

19 Is that accurate?

20 A. Yes.

21 Q. So it was Marvin who first mentioned at Migdalia's  
22 house or on steps of Migdalia's house that he was going to turn  
23 himself in?

24 A. Yes.

25 Q. On the next page: While you were walking up the

APRIL DIGGS - REDIRECT BY KOLANO

219

1 Avenue how many times did you discuss robbing someone?

2 "Answer: They only said maybe twice. As long as  
3 you don't rob anyone that I know, and I am not participating.  
4 And they said, We don't want you to do anything, just watch out  
5 for the cops."

6 Did I read that accurately?

7 A. Yes.

8 Q. Who was the They that said they don't want you to do  
9 anything, just watch out for the cops?

10 A. Antwan and Marvin.

11 Q. So twice, at least twice to your knowledge robbery was  
12 discussed?

13 A. Yes.

14 Q. Now, were you all four together the entire time? And  
15 when I say together, together to the point where you could hear  
16 every conversation between everyone?

17 A. We was walking like couple of feet back of them.

18 Q. When you say We were walking behind, who are you  
19 talking about?

20 A. Me and Renee my cousin.

21 Q. Could Antwan and Marvin have had conversations that  
22 you didn't hear?

23 A. Maybe.

24 MR. FLORCZAK: Objection. Calls for speculation on  
25 the part of the witness.

APRIL DIGGS - REDIRECT BY KOLANO

220

1 THE COURT: Yes, sustained. If she didn't hear it how  
2 would she know she wasn't hearing?

3 Q. During the time that they were together did you hear  
4 them talking?

5 A. Yes.

6 Q. Did you listen and pay attention to all the details of  
7 what they were talking about?

8 A. Yes.

9 Q. How far away were you behind them?

10 A. When they started talking about the robbery we was up like  
11 a little bit behind them.

12 Q. Okay. And what about before, after you left, after  
13 you got your chicken wings and four of you started taking your  
14 walk did you stay a constant distance behind them?

15 A. No. We was right behind about a couple of feet behind  
16 them.

17 Q. Were you and Renee talking?

18 A. Yeah.

19 Q. Were you able to listen in on any conversation that  
20 Antwan and Marvin were having while you and Renee were having  
21 your conversation?

22 A. Yes.

23 Q. Were you at Migdalia's earlier that day, if you  
24 remember?

25 A. I don't think so.

APRIL DIGGS - REDIRECT BY KOLANO

221

1 Q. You are not sure?

2 A. No, I am not sure.

3 MR. KOLANO: Thank you. Nothing further.

4 MR. FLORCZAK: One or two questions, your Honor.

5 RECROSS EXAMINATION BY MR. FLORCZAK:

6 Q. When you pled guilty the court told you you had to  
7 give them factual basis, you had to tell them what you did;  
8 isn't that true?

9 A. Yes.

10 Q. Now, if you recall what the prosecutor has asked you  
11 in explaining what you did, other than giving persons' names  
12 and saying Yes, did you say anything when you pled guilty as to  
13 what you did? In other words, other than saying Yes, agreeing  
14 to whatever was asked of you, did you tell the judge anything  
15 that you did?

16 A. I told him that I was a lookout.

17 Q. Where does it say that?

18 Did they ask you if you are a lookout and you said Yes?

19 A. They was asking questions, I was answering them.

20 Q. And you would answer in a form of Yes?

21 A. Yes. Yes.

22 Q. Than in fact you said Yes at least a dozen times,  
23 isn't that true?

24 A. Yes.

25 MR. FLORCZAK: That's all I have.

- APRIL DIGGS -

222

1 MR. KOLANO: Just like Mr. Florczak is asking you  
2 questions where he suggests an answer and you simply say Yes or  
3 No, yes?

4 THE WITNESS: Yes.

5 RECROSS EXAMINATION BY MR. FLORCZAK:

6 What you told me is the truth, what you just told me?

7 A. Pertaining to what? Pertaining to what?

8 Q. Let's go over each one of these and see if --

9 Backwards, let's start the last page. Do you recognize  
10 this, this is a transcript of your?

11 A. -- plea agreement.

12 Q. Plea. Okay. Do you remember being asked: And isn't  
13 it true that Marvin Mathis is the one that shot Tony the victim  
14 during the robbery attempt?

15 And the answer: Yes.

16 A. Yes.

17 Q. Now, you remember, Isn't it true, April Diggs, isn't  
18 it true that right before Marvin and Antwan approached Tony,  
19 Antonio Seravia, the owner of the American Portuguese liquor  
20 store on East Jersey Street, isn't it true that before that  
21 Antwan Harvey gave Marvin Mathis the gun; isn't that true?

22 A. Yes.

23 Q. And you answered yes. Have you any -- and do you  
24 recall being asked: And did you, did he in fact do that, go up  
25 and threaten the individual with the gun?

- APRIL DIGGS -

223

1 A. Yes.

2 Q. And you answered: Yes.

3 And have a purpose of getting that individual's money and  
4 or jewelry?

5 And the answer was -- ?

6 A. Yes.

7 Q. So they, the person asking the question in each and  
8 every case stated the facts and you simply said Yes?

9 A. Yes.

10 Q. And that's true?

11 A. Yes.

12 MR. FLORCZAK: Thank you.

13 MR. KOLANO: Nothing further.

14 THE COURT: All right. Ladies and gentlemen, we have  
15 come to the conclusion of the proceedings for today. As I  
16 mentioned to you when we started the trial, there was going to  
17 be an interruption in the trial while the court attended to  
18 other business, both tomorrow and on Monday of next week.

19 So the trial is recessed, then, for a four day period.  
20 That will be tomorrow, Friday, of course, Saturday and Sunday  
21 the courthouse will be closed, Monday other business, and the  
22 case will resume, this trial will resume at nine o'clock on  
23 Tuesday morning.

24 Throughout that period my instruction that you not  
25 engage in any discussions regarding the case with other members



1 of the jury, with anybody else, still applies.

2 My instruction that you not have any contact with  
3 anybody directly connected with the case still applies.

4 And the instruction that you not read anything about  
5 the case, if there should happen to be something in the paper,  
6 that also still applies.

7 I am going to dismiss you to the jury room. Collect  
8 your personal belongings, and then following our usual  
9 procedure let's wait until one of the officers excuses you for  
10 the weekend.

11 It is not necessary for you to call anybody and check  
12 in either tomorrow or Monday. Everyone in the jury management  
13 and the court knows that you are not expected to be here so you  
14 don't have to check in with anyone.

15 And when you do come in just report directly on  
16 Tuesday as you did today, report directly to the courtroom and  
17 assemble inside the jury room.

18 All right. You are excused now to the jury room.

19 And wait for the officer.

20 (Jury withdrew from the courtroom.)

21 (PROCEEDINGS TERMINATED FOR THE DAY)

22

23

24

25

## C E R T I F I C A T E

I, B. PETER SLUSAREK, C.S.R., License No. XI00291,  
an Official Court Reporter of the State of New Jersey, do  
hereby certify the foregoing to be prepared in full compliance  
with the current Transcript Format for Judicial Proceedings and  
is a true and accurate non-compressed transcript to the best of  
my knowledge and ability.

Date: March 13 1999.

B. PETER SLUSAREK, C.S.R., XI00291

Official Court Reporter

Union County Courthouse,

Elizabeth, New Jersey,

